IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6777 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRELI DISTRICT CENTRAL CO-OPERATIVE BANK LTD.
Versus
STATE OF GUJARAT AND ORS.

Appearance:
1. Special Civil Application No. 6777 of 1993
MR TUSHAR MEHTA for Petitioner No. 1
MS HARSHA DEVANI, A.G.P. for Respondent Nos. 1-3

CORAM : HON'BLE MR.JUSTICE J.N.BHATT

Date of decision: 26/03/2004

ORAL JUDGEMENT

1. In this petition, under Article 225 of the

Constitution of India, the challenge is against the show-cause notice dated 9th March, 1993, issued by the District Registrar, in exercise of the purported statutory powers under Section 86 of the Gujarat Cooperative Societies Act, 1961, on the premise of certain irregularities and breach of the regulations committed by the petitoner-Society.

2. The petitioner is a Cooperative Society ("Society") registered under the provisions of Gujarat Cooperative Societies Act, 1961 ("Act"). It is a specified society within the scheme of Section 74-C of the Act. It is engaged in the business of banking and is an Apex Society for the District of Amreli. The petitioner-Society is, also, having other Cooperative Societies as its members and, therefore, the petitioner-Society is a Federal Society, as defined under the provisions of the Act. This is the position and status of the petitioner-Society as stated and alleged by the petitioner.

3. Respondent No.3, District Registrar, by notice dated 9th March, 1993 has initiated proceedings preceded by the show-cause. The show-cause notice is challenged by the petitioner on the ground that the proceedings under Section-86 of the Act had been initiated and concluded; and, therefore, the second show-cause notice is bad in law. The learned Advocate appearing for the petitioner-society has relied on the decision of this Court rendered in Gujarat State Cooperative Marketing Federation Limited Vs. V.H. Parekh and Anr., 1995 (1) G.L.H. 857, (Coram: J.N. Bhatt, J.). In that, it has been contended that the District Registrar is a Member of the Society and, therefore, he cannot initiate any inquiry under Section 86 when he himself is a Member of the Board of the Directors. It has further been contended that the District Registrar, being one of the Directors of the Board of Director, is debarred from initiating actions against the petitioner-Company.

5. Ms. Devani, learned Assistant Government Pleader, has appeared. Affidavit-in-reply or written objections are not filed.

6. After having taking into consideration the submissions and the facts emerging from the record of the present case, it becomes clear that earlier show-cause notice under Section 86 of the Act had been issued by the District Registrar. Thereafter, an Inquiry Officer was appointed, who had submitted his report dated 23rd March, 1992. The petitioner-Society preferred a Revision

Application, being No. 488 of 1992, which came to be allowed on 30-06-1992. Thus, second notice, on the same cause of action and ground, where issues had become concluded and decided finally, had been issued. Obviously, therefore, this contention is advanced on behalf of the petitioner-Society, that the second show-cause notice on the same ground is illegal, and, therefore, is required to be quashed.

7. This submission is quite weighty and supportable from the record and analogous principles of res judicata that when the matter has reached finality, it cannot be allowed to be reopened. This Court is satisfied that earlier proceedings, against the petitioner-Society, initiated by respondent No.2-District Registrar by issuing show-cause notice under Section 85 of the Act, came to be concluded and had attained finality and, therefore, two show-cause notices on the same ground is not legal and permissible and, therefore, on this sole ground, the petition is required to be allowed. The petition is, therefore, allowed. Rule made absolute without any order as to costs.

(J. N. BHATT, J.)

/shamnath